

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Brice Yingling, et al.,

NO. C 09-01733 JW

Plaintiffs,

v.

**ORDER MODIFYING CLASS END
PERIOD; REQUESTING SUBMISSION
OF PROPOSED FORM OF CLASS
NOTICE AND DISSEMINATION FOR
COURT'S APPROVAL**

eBay, Inc.,

Defendant.

Presently before the Court are the parties' supplemental briefing regarding the class period end date.¹ On July 16, 2010, the Court certified the following class, subject to supplemental briefing as to the class period end date:

All persons who paid so-called Final Value Fees in conjunction with a listing of an item within eBay, Inc.'s ("eBay") defined category of "Parts & Accessories" on the eBay Motors web site, which listing was placed between April 21, 2005, and April 13, 2009 with a column heading for Parts & Accessories entitled "Final Value Fees."²

Defendant proposes two possible end dates. Primarily, Defendant contends that the proper end date is June 15, 2006 because on that date, Defendant modified the relevant section of its website to state "You may list vehicle parts and accessories in two categories on both ebay.com and eBay Motors. . . . Final Value Fees remain the same whether you list in one category or two." (Def. Brief at 1-2.) Alternatively, Defendant contends that the proper end date is February 20, 2008 because on that date, Defendant modified the relevant section of its website to state (the "Motor Fees

¹ (See Defendant's Supplemental Briefing in Connection with Plaintiffs' Class Certification Motion, hereafter, "Def. Brief," Docket Item No. 186; Plaintiffs' Post-Certification Brief Regarding End Date of Class Period, hereafter, "Pl. Brief," Docket Item No. 188.)

² (Order Granting Plaintiffs' Motion for Class Certification at 11-12, hereafter, "July 16, 2010 Order," Docket Item No. 185.)

Chart”), under a column heading entitled “Transaction Services Fee,” that the relevant charge for sales in the Parts and Accessories category was the “Same as eBay.com Final Value Fees.” (Def. Brief at 2.) Plaintiffs contend that the proper end date is August 26, 2009 because on that date Defendant modified the “Transaction Services Fee” column heading to state “Final Value Fees,” which put a rest to any possible confusion over the applicable fees. (Pl. Brief at 4.)

The Court finds that August 26, 2009 is the appropriate class period end date. Although the change to Defendant’s website on June 15, 2006 may have helped to clarify somewhat the applicable fees, the Motor Fees Chart described the applicable fees for sales in Parts and Accessories as “Same as eBay.com *Insertion Fees*” until February 20, 2008.³ Although that language was changed on February 20, 2008 to “Same as eBay.com Final Value Fees,” it still appeared in the Motor Fees Chart under a column heading entitled “Transaction Services Fee.” (Hartrich Decl. ¶ 25.) The Motor Fees Chart explained that “The Transaction Services Fee is charged when the *first* bid is made on a listing without a reserve price or when your reserve price is met,” rather than basing it on the *final* value of the item sold. (*Id.* (emphasis added).) Defendant has not shown that this language was sufficiently clear to serve as an appropriate end date for the class period. Rather, the Court finds Plaintiffs’ August 26, 2009 end date reasonable that for the purpose of class certification. Class members could reasonably have been uncertain of the applicable fee until August 26, 2009, when Defendant modified the column heading entitled “Transaction Services Fee” to “Final Value Fee.” Thus, the Court finds that the class period should extend to August 26, 2009.

Accordingly, the Court modifies the certified class as follows:


All persons who paid so-called Final Value Fees in conjunction with a listing of an item within eBay, Inc.’s (“eBay”) defined category of “Parts & Accessories” on the eBay Motors web site, which listing was placed between April 21, 2005, and August 26, 2009.⁴

³ (Declaration of Liz Hartrich in Support of Defendant’s Opposition to Plaintiffs’ Motion for Class Certification ¶¶ 23-24, hereafter, “Hartrich Decl.,” Docket Item No. 118 (emphasis added).)

⁴ The Court has removed from the class definition the phrase “with a column heading for Parts & Accessories entitled ‘Final Value Fees,’” since it does not serve to define the class, but merely to explain a change in Defendant’s website that occurred on the class period end date.

On or before **August 30, 2010**, the parties shall file a proposed form of class notice and a joint proposal for dissemination of notice for the Court's approval.

Dated: July 27, 2010



JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Benjamin F Chapman bchapman@cooley.com
James M. Penning jpenning@cooley.com
Keith R Verges kverges@figdav.com
Michael Graham Rhodes rhodesmg@cooley.com
Parker D Young parker.young@figdav.com
Raymond Earl Walker ray.walker@figdav.com
Shawn Tenzing Leuthold leuthold@aol.com
Whitty Somvichian wsomvichian@cooley.com

Dated: July 27, 2010

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy